IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SEVENTEENTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 16281 of 2004

Between:

B. Krishna Rao, S/o. Late Chinna, Hindu, Retired Pharmacist,
R/o. Telaga Street, Salur, Vizianagaram District.

..... PETITIONER

AND

1 The Chief Engineer (Constructions), South Eastern Railway, Visakhapatnam.
2 The Chief Administrative Officer, South Eastern Railway, (Con), Bhubaneswar, Orissa.
3 The Chief Project Manager, South Eastern Railway, Rayagada, Orissa.
4 The Senior Divisional Personnel Officer (Settlements), South Eastern Railway, Visakhapatnam.
5 The General Manager, Garden Reach, South Eastern Railway, Kolkatta, West Begal.
6 The Chief Engineer(Con-I), South Eastern Railway, Bhubaneswar, Orissa.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, order or direction more particularly one in the nature of Writ of Certiorari calling for the records in OA No. 81/2003 dt. 16-2-2004 and to set aside the order passed by the 1st respondent in No. E/35/BKN/NR/Deposit/DCRG/3343 dt. 16-2-2001 and consequential order dt. 25-10-2002 of the 6th respondent as highly illegal, arbitrary, unjust and void and violative of Article 14 of the Constitution of India and

consequently direct the respondents to pay the amount of Rs. 1,10,000/- which has been deducted from the petitioner's Death-Cum-Retirement Gratuity towards difference of house rent for the period from 7-5-91 to 8-7-99.

Counsel for the Petitioner: MR.K.SUBRAHMANYAM

Counsel for the Respondents: MR.G.S.SANGHI, STANDING COUNSEL.

The Court made the following :

ORAL ORDER: (per GB.J.)

The Writ Petition is filed challenging the order passed by the Central Administrative Tribunal (for short Tribunal) in O.A.No.81 of 2003, dated 16.2.2004.

2. The petitioner is the applicant before the Tribunal. He challenged the order passed by the 1st respondent dated 16.2.2001 withholding a sum of Rs.1,10,000/- from DCRG on the ground that the petitioner has to pay a penal rent in respect of the quarter retained by him at Koraput from 17.5.1991 to 8.7.1999. The Tribunal passed the following order:

> ".....The authorities cannot levy more than the normal rent for the first two months and double the licence fee in another six months for this allowable period of eight months, and, therefore, have to reduce the amount from the rates charged as damage rent for this period. Besides, they have also to reduce the normal rent paid, if any, by the applicant from the amounts of damage rent worked out for the rest of the period".

Not satisfied with the relief granted by the Tribunal, the present Writ Petition has been filed.

3. It is the case of the petitioner that he was initially appointed as Pharmacist in Chittaranjan Locomotive Works in 1962. But, however, he was transferred to South Eastern Railway on 15.11.1983 and posted at Koraput as Pharmacist. While working at Koraput, he was allotted a Type 2-D quarter in 1985. Thereafter he was again transferred to Lellygumma camp in the month of May, 1991 and there he worked as Pharmacist. Ultimately he was retired from service on 31.10.2000. It is the further case of the petitioner that there are no quarters at Lellygumma camp and similarly situate persons who were posted at Lellygumkma camp were allowed to occupy the quarters at Koraput and from

them only the normal rent was being deducted. Even in the case of the petitioner the normal rent was being deducted and at no point of time any notice was issued to him to pay double the rent for the retention of the quarter at Koraput.

4. The learned counsel for the petitioner submits that since no quarter was allotted to the petitioner at Lellygumma camp and no quarters were available there and that the children of the petitioner were studying at Koraput, he is entitled to continue at Koraput quarters by paying normal rent. It is also further submitted that the similarly situate persons who were transferred to Koraput from Visakhapatnam were allowed to retain the quarters at Visakhapatnam on payment of normal rent, and in the instant case, the Lellygumma camp to which place the petitioner was transferred was not having even the departmental quarters and it being a forest area and the case of the petitioner stands on a better footing than the employees who were allowed to retain the quarters at Visakhapatnam. Thus it is submitted that the petitioner cannot be discriminated and these aspects were not considered by the Tribunal.

5. We have also heard the learned Standing Counsel for Railways.

6. It is not in dispute that the quarter was allotted to the petitioner in 1985. However, when he was transferred to Lellygumma camp in May, 1991, he continued to retain the said quarter. Further, the authorities have only deducted normal rent for the period from 1991 to 1999. We are unable to understand as to why the Department has kept quiet if the petitioner was in unauthorized occupation of the quarter and why the penal rent has not been imposed and recovered from his pay when he was in service. It is also stated that since Lellygumma camp has no quarters, the employees were allowed to continue the quarters at Koraput and no penal rent was being collected from them. We are unable to decide this aspect on the basis of the material available on record. Since the petitioner retired from service in 2000 and his DCRG amount has not been paid fully and substantial amount of DCRG has been withheld on the ground that the penal rent has to be deducted from the petitioner for the occupation of the quarter from 17.5.1991 to 8.7.1999, and in similar circumstances only normal rent was collected from the other similarly situate employees, we are of the considered view that the matter requires reconsideration by the authorities afresh.

7. Accordingly the Writ Petition is disposed of directing the petitioner to file a detailed representation to the authorities giving the details of the other similarly situate persons from whom the only normal rent was collected and other reasons for not collecting the penal rent. He shall submit such representation within a period of six (06) weeks from the date of receipt of a copy of this order and the 1st respondent shall dispose of the said representation within a period of six (06) weeks thereafter duly taking into consideration the points raised by the petitioner in his representation. No costs.

(G.BIKSHAPATHY, J.)

17th January, 2005.

(P.S.NARAYANA, J.)

SSR

Issue copy in a week.

(BO)

..... REGISTRAR

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SECTION OFFICER

To

1 The Chief Engineer (Constructions), South Eastern Railway, Visakhapatnam.
2 The Chief Administrative Officer, South Eastern Railway, (Con), Bhubaneswar, Orissa.
3 The Chief Project Manager, South Eastern Railway, Rayagada, Orissa.
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5 The General Manager, Garden Reach, South Eastern Railway, Kolkatta, West Begal.
6 The Chief Engineer(Con-I), South Eastern Railway, Bhubaneswar, Orissa.

7 The Registrar, Central Administrative Tribunal, Hyderabad.

8 2 CCs to Mr.G.S.Sanghi, learned Standing Counsel for Railways, High Court of A.P. (OPUC).

9 2 CD copies